

## 48 HOUR INFORMATION FROM NEIGHBORS

**Lehner, Catalina L.**

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**From:** Ken Churchill <ken@abq45.com>  
**Sent:** Friday, February 07, 2020 9:23 AM  
**To:** Lehner, Catalina L.  
**Cc:** Hessel Yntema; Dr. Susan Chaudoir; JOEVALLES  
**Subject:** Project #: 2018-001402 Case #: SI-2018-00171  
**Attachments:** 4\_COSdefined.jpg; Easement.jpg

Dear Ms. Lehner,

After reading the Supplemental Staff Report 3- Remand for this case, a question arises and it is my hope that an explanation may be offered.

"Page 14, C.2.ii the ability to count drainage easements as part of its required open space designation MET"

implies that the AMAFCA easement is "on site ponding", rather than a "drainage facility". This seems in contradiction to the 1993 AMAFCA easement document itself which uses the specific words "drainage" and "facility". The attached copy of the easement shows this language.

The attached references to the IDO definitions of "common open space", "private open space" and "usable open space" should apply to cluster development project sites since "for the use and enjoyment" of owners requires the common open space to be "usable open space". The site plan as most recently submitted identifies the AMAFCA easement as part of "private open space" and counts it as "usable". However the IDO disallows "drainage facilities" to be counted as "usable open space".

Have I misinterpreted the need for cluster dwelling "common open space" to also be "usable open space" for owners? Thank you for any clarification.

Please include my comments and your reply in the official record of this case.

Sincerely,

Ken Churchill, 4612 Almeria Dr., ABQ, NM 87120

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This message has been analyzed by Deep Discovery Email Inspector.

**Lehner, Catalina L.**

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**From:** gulleyt@aol.com  
**Sent:** Sunday, February 09, 2020 2:45 PM  
**To:** Lehner, Catalina L.  
**Cc:** hess@yntema-law.com; ken@abq45.com; edu.chaudoir@gmail.com; joevalles@aol.com  
**Subject:** Project 2018-001402, revised site plan of November 25, 2019: Your supplemental report  
**Attachments:** AMAFCA easement 12.20.19.jpg; AMAFCA easement 1.25.20.jpg

Hi Catalina, it's Tom Gulley, appellant in 19-6. This is a supplement to my December 16, 2019, letter to Mr. Brito, part of the record in this matter. Please add this email and attachments as part of the 48 hour material.

While I agree with much of your Supplemental Report, I believe your position stated on page 14 that the AMAFCA easement can be counted as Common Open Space because it is on-site ponding is incorrect.

The easement, when it has water in it after a substantial rainfall, is usually quite nasty, filled with weeds and debris carried down the arroyo from the west. But, more often than not, the easement is either dry or has a puddle or two in it. Just because there is occasionally nasty water or a puddle or two in it, the easement should not be considered on-site ponding. That is surely not what the term on-site ponding contemplates.

You cite the definition of Common Open Space which provides that the space must be for the use and enjoyment of the residents. You do not discuss how or why the residents will use and enjoy the AMAFCA easement. In fact, because of its condition, the residents will not use and enjoy the easement. The Open Space Division memo of December 16, 2019, page 2, supports that conclusion by stating that the "AMAFCA sedimentation pond" is "not well suited for public use and enjoyment."

I attached photos to my letter to Mr. Brito that show the typical nasty condition of the easement after a substantial rainfall and when the easement is dry. I now attach photos I took December 20, 2019, and January 25, 2020, to illustrate further how the so-called on site ponding often looks.

Moreover, the easement itself precludes use of it as more fully addressed in my letter to Mr. Brito.

Without the easement, the Common Open Space for Cluster B falls short of the required space.

Thank you for your consideration.

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This message has been analyzed by Deep Discovery Email Inspector.











**Lehner, Catalina L.**

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**From:** JOEL MILLER <klmiller123@sbcglobal.net>  
**Sent:** Monday, February 10, 2020 3:10 PM  
**To:** Lehner, Catalina L.  
**Subject:** Call for a cultural center on the Poole property  
**Attachments:** Call for a cultural center for Andalusia and surrounding properties.docx

To Catalina Lehner: Please make the attached document a part of documents relating to the call for a cultural center on the Poole property. I will be speaking to the points in the document during the meeting of the Environmental Planning Commission this week.

Sincerely,  
Joel Miller  
4608 Cayetana Place NW  
310-968-3487

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This message has been analyzed by Deep Discovery Email Inspector.



Joel & Kari Miller, homeowners who live near the Poole Property

As fairly new residents of the Andalucía neighborhood, my wife and I were pleased to hear about proposals to acquire the former Poole property to develop as a cultural site available to the community. But this property is unfortunately being discussed as a possible site for new homes, even though the site does not appear to meet cluster requirements.

The crux of the discussion in favor of a cultural center is the many ways such a center can meet public needs and at the same time add value to existing properties around or near the site. It is worth noting, this would be the first and only such cultural amenity on the West side.

Developers can and should look elsewhere nearby to construct new homes. This would be in their best interests and the interests of existing home owners. A number of studies in the U. S. and in Europe show property values are positively impacted by cultural centers, open space planning, museums and other amenities. I have footnoted those studies in the presentation document I submitted to the Commission a week ago.\*

We urge the Commission to look seriously at these studies. Developers should also examine the studies before deciding to compete with the public interest, especially since many in the State Legislature favor purchase of the property to add to the west-side park system along the river.

We urge the Commission not to approve home-building on the Poole property: (1) The site plan does not meet setback requirements for minimum distance from the water; (2) nor does the plan meet common open space requirements to protect the property in relation to a sensitive lands analysis. Home development on the Poole property is a bad idea.

The development of open areas and trails is naturally appealing for us and other families. A cultural center will turn our neighborhood into a mecca, a “field of dreams”, for residents and visitors, who value nature, the arts and education.

We urge the commission and developers to study the research. Housing development should not be allowed to crowd out natural and cultural preservation efforts in our neighborhood.

\*Studies examined:

Stephen Sheppard, Department of Economics for Williams College in Massachusetts, lead author for a study on “The Impact of Cultural Amenities on Property Values”, concluded, “We find that local availability of cultural amenities can have significant impacts on property values.

The study concludes: “One of the most important implications of our analysis is the evidence presented that there are significant public benefits generated by the local cultural sector. These benefits are revealed by the improved property values that provide a measure of the willingness of households to pay to reside in a community with a more active arts and culture scene.”



[https://www.researchgate.net/publication/254929145\\_Buying\\_Into\\_Bohemia\\_the\\_Impact\\_of\\_Cultural\\_Amenities\\_on\\_Property\\_Values1](https://www.researchgate.net/publication/254929145_Buying_Into_Bohemia_the_Impact_of_Cultural_Amenities_on_Property_Values1)

Other studies done in the United States and in Europe draw the same conclusions. See Sofia Franco's and Jacob Macdonald's study of rising housing prices in Lisbon Portugal near landmark structures and cultural amenities.  
<https://ideas.repec.org/p/wiw/wiwrsa/ersa15p657.html>

Others who have studied this phenomenon reach similar conclusions:

<https://repositorio.iscte-iul.pt/bitstream/10071/13567/1/LING%20WANG-Cultural%20effects%20on%20real%20estate%20market%20an%20explanat.pdf>

<https://www.jstor.org/stable/3146847?seq=1>

Studies also point to increased property values over time in the presence of cultural amenities, even as homes themselves may depreciate. This increase can in time lead to home renewal and retention of residence values.



**Lehner, Catalina L.**

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**From:** Rene' Horvath <aboard111@gmail.com>  
**Sent:** Tuesday, February 11, 2020 9:01 AM  
**To:** Lehner, Catalina L.; Henry, Dora L.  
**Subject:** TRNA for upcoming EPC Hearing Feb. 13th.  
**Attachments:** TRNA letter.docx

Dear Catalina,  
Here is TRNA's letter for the Feb. 13th EPC Hearing, to meet the 48 Rule.  
Please let me know you received it.  
Thank you,  
Rene' Horvath  
TRNA

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This message has been analyzed by Deep Discovery Email Inspector.

February 10, 2020

Re: Overlook at Oxbow

Agenda Number: 5 Project #: 2018-001402,

Case #: SI-2018-00171, Hearing Date: February 13, 2020

Environmental Planning Commission

Dear Chair Serrano and fellow Environmental Planning Commissioners,

TRNA would like to comment on the revised site plan submitted on November 25, 2019. The site plan is within the TRNA boundaries and adjacent to the San Antonio Oxbow Major Public Open Space (MPOS), which is considered a significant wildlife preserve within the City of Albuquerque. The revised plan is to address the Council's remand of the EPC's prior approval of the March 14th, 2019 site plan. Two main issues regarding Cluster and the definition of Open Space requirements need to be addressed, though there continues to be many issues that still remain and need to be addressed due to the sensitive location of the proposed development.

Overall the protective requirements are either being waived or misinterpreted.

First TRNA supports the Planner's recommendation that the case be deferred for 60 days in order to address the Appeal of a Declaratory Ruling, regarding the IDO set back requirements for Common Open Space, filed on January 25th, 2020. That Appeal case still awaits to be scheduled. The staff report explains that the site plan lacks the necessary information to determine if the setbacks meet the IDO requirements.

Otherwise if the EPC does hear the case, TRNA requests that the proposed site plan be denied for the following reasons:

**[I]** The revised site plan continues to ignore the protective requirements of the IDO. It proposes too much density and not enough buffer to separate the residents and the Oxbow wildlife habitat. The lack of adequate buffer will cause future problems in which the Albuquerque taxpayers could be relied upon to fix. Reasons for a large buffer: a) The 20 ft. sandy bluff overlooking the Oxbow is extremely erodible, and needs constant maintenance. The proposed site plan does not address measures to contain the erosion. b) The plan does not address Bosque fire protection. The site plan places many homes near the edge of the bluff. This puts many residents and their homes at risk adjacent to a fire prone area. c) The plan does not acknowledge wildlife conflicts with adjacent residents. Remedies such as vegetation removal, or the use of chemicals to ward off disease carrying mosquitoes could be very impactful to the Oxbow ecosystem. The site plan should consider these factors and adhere to the protective requirements of the IDO rather than seeking waivers and promoting misinterpretation of the rules, in order to increase the density of the site.

The revised site plan does not meet the Remand of the IDO Rules:



**[II] The Site Plan is not a Cluster development Design.** Instead the Site Plan is a typical subdivision with buildings scattered throughout the Site. The homes are not clustered or concentrated within a specific area so that the required Open Space can be contiguous to the existing Oxbow Open Space, as required. If the Site Plan had followed the IDO Cluster Design properly and acknowledged the sensitive nature of the Oxbow, it would have placed the residents on the west side of the property and the 30% required Open Space, on the eastside. The site plan does not meet any of the following IDO requirements.

**a) The IDO defines a "Cluster Development Design"** as "A design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, open space, or preservation of sensitive lands." **Pg. 453 IDO definitions. § 14-16-7-1 "Cluster Development Design."**

**b) See 5-2(H)(2)(a) pg. 205,** "Development on properties of any size adjacent to Major Public Open Space shall: **Locate on-site open space to be contiguous with the Major Public Open Space**" ....

**c) 4-3(B)(2)(c) pg. 136:** "The number of dwelling units is determined by dividing the site area by the minimum lot size allowed in the zone rounded down to the nearest whole number but **shall not exceed 50**, except in the Los Duranes – CPO-6, where the number of dwelling units shall not exceed 20."

The site Plan is for one 20 acre site, not multiple sites, the 50 dwelling unit applies to this site.

**[III] The AMAFCA Detention Pond does not meet the criteria established in the IDO for suitable Open Space.** The AMAFCA pond does not meet the definition of Usable Open Space on required drainage facilities. The AMAFCA detention Pond is located along the San Antonio Arroyo floodway, north of the Poole property. It is a regional drainage facility that directs storm water flows from the escarpment to the river. (See picture below.) The Detention pond collects trash, debris and sediment flowing down the arroyo and captures it before it can enter the Rio Grande. Storm water flows enter the basin directly from the San Antonio arroyo. If these flows are large enough, they build up and flow over a concrete weir into the outfall channel to the Rio Grande. Smaller flows are collected in a standpipe within the basin and directed to the outfall channel further downstream in a culvert. The debris and sediment collected in the basin is periodically removed by AMAFCA and hauled away. A portion of the storm water runoff from the proposed subdivision is designed to be collected and directed into the debris basin. This basin is maintained by AMAFCA, and will never be privately managed by the home owners association. It will never be landscaped because it is usually full of muck and tree branches. It is a major component of the San Antonio floodway, which automatically disqualifies it as usable open space. The following IDO definitions are pertinent to this issue:

**a) IDO definition of Floodway:** "The channel of a river, arroyo, or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood." **pg. 462 IDO def. (14-16-7).**

**The AMAFCA detention Pond, and the Oxbow wetlands are both floodways. They should not be counted as the 30 % open space requirement.**

**b) IDO definition of Common Open Space:** " The area of **undeveloped land** within a cluster development that is set aside for the use and enjoyment by the owners and occupants of the dwellings in the development and includes agriculture, landscaping, on-site ponding, or outdoor recreation uses. The common open space is a separate lot or easement on the subdivision plat of the cluster development." **pg. 479, IDO definition 14-16-7.**

**The AMAFCA Pond is a developed structure, serving only as a floodway. The Oxbow is a floodway and could never be developed. There is no trade between giving land to be preserved in exchange to do small lots. The Oxbow could never be developed in the first place.**

**c) IDO definition of Usable Open Space:** "Outdoor space to be preserved on-site and managed privately to help ensure livable conditions on each site by providing light and air and meeting visual, psychological, and recreational needs." " **Required drainage facilities** or land within an easement for overhead utilities that are not landscaped **shall not count toward required usable open space.**" **Pg. 480, IDO definition 14-16-7.**

**AMAFCA Pond is a drainage facility, not a sensitive land.**

**[IV] Other issues with site plan: The Revised Site Plan does not comply the following IDO regulations due to variances and waivers the applicant received behind closed doors before the March 14th hearing.**

**a) Single loaded streets:** The IDO it states: **5-2(H)(2)(a) pg. 205**, "Development on properties of any size adjacent to Major Public Open Space **shall** platted and/or designed to **incorporate a single-loaded street between the Major Public Open Space and development,.....**

The Applicant sought and received a waiver to remove this requirement, before the public could respond at the EPC hearing.

**b) Cul de Sacs are prohibited. (Part 14-16-5: Development Standards 5-3(E): Subdivision Access and Circulation 5-3: Access and Connectivity 5-3(E)(1): Street Connectivity: 5-3(E)(1)(d) Stub Streets and Cul-de-Sacs:** "Stub streets and cul-de-sacs that terminate the road **are prohibited**, with the following exceptions: Permanent stub streets are **allowed only** where a connection to an existing street and a future **road extension is not possible or feasible.**" "Where allowed, stub streets are limited to 150 feet in length."

Please note, last year the applicant received a variance to close off 3 of the 4 exits on the north side of the property leaving only one emergency exit. Keeping the existing exits would have maintained the connectivity that the IDO promotes, especially for emergency situations. How can the applicant justify the cul-de-sacs when the variance they requested eliminated the three existing exits that already connected to adjacent streets?

**c) 1-8 RELATIONSHIP TO OTHER REGULATIONS 1-8(A)** "If two or more of the regulations in this IDO conflict with each other, the more restrictive provision shall prevail, unless specified otherwise," ....



We find the site plan does not comply with the IDO rules for protection of Sensitive lands, but instead has relied upon waivers and variances to increase the density, and should be denied. A site Plan could work as long as the IDO requirements are followed. Now is not the time to relax the rules, especially adjacent to sensitive areas. The residential cluster design should be placed on the western half of the property with the 30 % required Open Space on the eastern half of the property separated by a single loaded street. Following the protective IDO requirements will do more to provide the necessary protections needed for a site adjacent to a sensitive area, and would prevent future problems if designed properly. Therefore the revised Site Plan does not meet the protective requirements and should be denied.

Thank you,

Rene' Horvath  
Land Use Director for the  
Taylor Ranch Neighborhood association.



**AMAFCA detention pond in the San Antonio Arroyo/Floodway**

**Lehner, Catalina L.**

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**From:** Brito, Russell D.  
**Sent:** Friday, February 07, 2020 8:25 AM  
**To:** Lehner, Catalina L.  
**Cc:** Williams, Brennon  
**Subject:** FW: Public Comment from Joan Morrison to OPPOSE PR-2018-001402/VA-2019-00103

**From:** form\_engine@fs6.formsite.com <form\_engine@fs6.formsite.com>  
**Sent:** Friday, February 7, 2020 6:20 AM  
**To:** Brito, Russell D. <RBrito@cabq.gov>  
**Subject:** Public Comment from Joan Morrison to OPPOSE PR-2018-001402/VA-2019-00103

Dear Mr. Brito.

Please note my below message regarding PR-2018-001402/SI-2018-00171/VA-2019-00103.

This message is being cc'd to Sarita Nair ([snair@cabq.gov](mailto:snair@cabq.gov)), Janelle Johnson ([janellejohnson@cabq.gov](mailto:janellejohnson@cabq.gov)), James Aranda ([jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)), and Mayor Keller ([tkeller@cabq.gov](mailto:tkeller@cabq.gov)), as well as my City Councilor.

I OBJECT to the City Council's decision to limit the findings, which excluded issues previously raised by the public, all of which are pertinent to PR-2018-001402/SI-2018-00171/VA-2019-00103, including but not limited to:

1. sensitive lands; 5-2(C)(1) p198
2. major public open space
3. contiguous open space; 5-2(H)(2) p205-206
4. landscaping; Goal 10.3; CP10.3.4
5. adverse impacts to surrounding natural/cultural landscapes; 6-6(H)(3)(e) CP11.3.1/11.3.2/11.3.3

I RESTATE any and all previously submitted objections and oppositions.

I OPPOSE the updated site plan and object to the City Council's decision to limit the pertinent issues previously raised by the public and respectfully ask the EPC to deny approval(s) for project PR-2018-001402/SI-2018-00171/VA-2019-00103.

I understand that the issues relating to the remand findings include:

- (A) Applicable IDO Requirements;
- (B) Site Plan and Deficiencies;
- (C) EPC Remand Instructions; and
- (D) Other Matters.

I respectfully submit to the record this letter to state that:

(A) Applicable IDO Requirements

It is undisputed that the updated project site plan does not satisfy the text of the IDO definitions specific to this particular property (per IDO Section 4-3(B)(2)(d,e,f)). Definitions include:



(a) Cluster Development Design: A design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, open space, or preservation of sensitive lands. (p. 453)

(b) Cluster Development Dwelling: A development type that concentrates single-family or two-family dwellings on smaller lots than would otherwise be allowed in the zone district in return for the preservation of common open space within the same site, on a separate lot, or in an easement. (p. 458)

(c) Common Open Space: The area of undeveloped land within a cluster development that is set aside for the use and enjoyment by the owners and occupants of the dwellings in the development and includes agriculture, landscaping, on-site ponding, or outdoor recreation uses. The common open space is a separate lot or easement on the subdivision plat of the cluster development. (p. 479)

#### (B) Site Plan and Deficiencies

► It is undisputed that the updated project site plan is deficient as a “cluster development” and depicts a traditional, conventional subdivision layout in that it does not “concentrate buildings”, such as the exemplary cluster design of La Luz Subdivision, which is an 1/8 mile from this site;

► As stated by the Land Use Hearing Officer, “it is undisputed that there is no intent to phase the developments at the application site” [R.398];

► It is undisputed that the updated project site plan is deficient in that the total site area of 23.75 acres as one project cannot exceed 50 dwelling units;

► It is undisputed that the updated project site plan fails to satisfy requirements of the IDO for common open space because the project site uses existing preserved lands; there is no exchange “in return” for preservation; the updated site plan deceptively tries to cheat by covertly including existing common open space in its calculations;

► It is undisputed that the updated project site plan does not satisfy “dedication” (IDO text) or/nor “designation” (applicant text) of: 1) a sediment pond and 2) AMAFCA easement; neither qualify for common open;

► The record shows that the Open Space Superintendent and City Councilors “prefer development away from the eastern edge” which is the most sensitive boundary of the property, and the updated site plan dangerously develops the eastern edge, at the most sensitive portion, and creates devastating loss and damage to each type of qualifying sensitive lands on p198 [see D) below];

► It is undisputed that the updated project site plan is deficient when IDO Section 5-2(C)(4) implies that fewer lots should be considered for property adjacent to sensitive lands and that the proposed site design avoid sensitive flood ways and flood fringe areas.

► The updated project site plan clearly created higher density. It is undisputed that the updated project site plan fails to show how it avoids sensitive lands and/or minimizes problems arising from such density adjacent to and abutting sensitive lands, as noted at the August 5, 2019 City Council hearing by Councilor Borrego as a “huge issue to be resolved” by EPC.

#### (C) EPC Remand Instructions

It is clear the applicant is attempting to re-write the City Council’s findings for C(2) and C(3). The applicant must not be allowed to set the direction for EPC Remand instructions, which are solely and strictly the authority of the City Council, not the applicant. The EPC is expected by all parties, including the public, to follow the City



Council's instructions verbatim, legally and ethically. It is the EPC who is directed by City Council to solely, fully and wholly evaluate, explain and issue a decision for C(2) and C(3) as they are written by City Council. The City Council's instructions are binding, and not allowed to be arbitrarily and capriciously rewritten by the applicant for the benefit of the applicant. The applicant cannot act as consultant to the EPC.

This is particularly relevant to this case because this site includes sensitive lands, large strands of mature trees, US Waters, and adjacency to major public open space and protected lands such as the Rio Grande Valley State Park, Bosque, Rio Grande River, San Antonio Oxbow Wetland, San Antonio Oxbow Open Space, Montano Pueblo Open Space, and San Antonio Arroyo.

To date, this case has received hundreds of public submissions that oppose the project.

#### (D) Other Matters

##### ► Sensitive Lands

It is clear the updated project site plan does not explicate how the cluster development avoids sensitive lands. To date, the record lacks clear, reliable evidence showing how each of the criteria below has been fully analyzed and assessed, in spite of the staff planner's request to provide it and the Land Use Hearing Officer's confirmation of its importance to public safety. To date, those requirements are likely outstanding, deficient, omitted, or avoided:

- Steep slopes (5-2(C)(1)(b))
- Unstable soils (5-2(C)(1)(c))
- Wetlands (5-2(C)(1)(d))
- Arroyos (5-2(C)(1)(e))
- Irrigation facilities; acequias (5-2(C)(1)(f))
- Escarpments (5-2(C)(1)(g))
- Rock outcroppings (5-2(C)(1)(h))
- Large strands of mature trees (5-2(C)(1)(i))
- Archaeological sites (5-2(C)(1)(j))

In other words, the applicant must prove the above are not sensitive before granted approvals for the updated project site plan. The applicant must prove "structures will minimize problems arising from said development" (see p443, EPA Performance Controls for Sensitive Lands: A Practical Guide for Administrators)

##### ► No Negative Impact

It is the applicant, not appellants, who must provide and explicitly demonstrate that there will be no negative material or physical impact on the habitat values of the MPOS (per IDO Section 5-2(H)(2)(b)) and/or the sensitive lands above. No evidence has been provided to explicitly demonstrate material or physical impact on public safety, health, and welfare (e.g., fire safety). It is unclear from the updated project site plan that this cluster development mitigates adverse impacts on the following areas to the maximum extent possible (Per IDO Section 6-6(H)(3)(e) and the ABC Comprehensive Plan):

- public and private open space (Goal 10.3);
- bosque (Policy 10.3.4; 11.3.3);
- Rio Grande River (Policy 10.3.4);
- surrounding natural and cultural landscapes (Policy 11.3.1);
- arroyos (Policy 11.3.2);
- public park;
- wildlife habitat;
- recreational trails;
- watershed management; and
- drainage functions.



I OPPOSE the “updated site plan - EPC”;

I respectfully ask the EPC to DENY approval(s) for project PR-2018-001402/SI-2018-00171/VA-2019-00103.

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► Major Public Open Space (MPOS)

It is obvious that the updated site plan does not have contiguous open space with the adjacent MPOS per IDO Section 5-2(H)(2)(a), which in this case is the San Antonio Oxbow Wetland (designated protection status); San Antonio Oxbow Open Space, Montano Pueblo Open Space, Rio Grande, and Rio Grande Bosque.

► It is clear that significant erosion is currently an issue along the bluff. It is unclear how:

--the problem will be mitigated by the updated site plan’s development flows; and

--the proposed buffer in the updated site plan does not mitigate conditions to the maximum extent possible.

► Adverse, Harmful Impacts to Natural/Cultural Landscapes

It is clear the updated site plan does not protect native species, nor describe how native and cultural features will be protected and/or monitored and/or explicitly disclose what non-native species will be prohibited in order to protect on-site botanical ecosystems inexorably linked to adjacent wetland, river, arroyo, and open space ecosystems and sensitive habitat.

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In Summary I OPPOSE the “updated site plan - EPC”;

I OBJECT to the City Council’s decision to limit the findings, which excluded issues previously raised by the public, including but not limited to, single project site, cluster development design, open space calculations, setbacks, sensitive lands, major public open space, contiguous open space, AMAFCA easement, landscaping, connectivity, hydrology concerns, and adverse impacts to surrounding natural/cultural landscapes, common open space and contiguous open space violations, all of which are pertinent to PR-2018-001402/SI-2018-00171/VA-2019-00103.

I RESTATE any and all previously submitted objections and oppositions.

I respectfully ask the EPC to DENY approval(s) for project PR-2018-001402/SI-2018-00171/VA-2019-00103.

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**cc'd to:** District 1, Office of District 1 Councilor, letter(s) will be sent to the correct individual at the office of the honorable and former (deceased) Councilor Ken Sanchez: Policy Analyst Elaine Romero: [eromero@cabq.gov](mailto:eromero@cabq.gov)  
District 2, Councilor Isaac Benton, letter(s) will be sent to Councilor Isaac Benton: [ibenton@cabq.gov](mailto:ibenton@cabq.gov) and Policy Analyst Diane Dolan: [ddolan@cabq.gov](mailto:ddolan@cabq.gov)  
District 3, Councilor Klarissa Peña, letter(s) will be sent to Councilor Klarissa Peña: [kpena@cabq.gov](mailto:kpena@cabq.gov) and Policy Analyst Cherise Quezada: [cquezada@cabq.gov](mailto:cquezada@cabq.gov)  
District 4, Councilor Brook Bassan, letter(s) once Councilor Bassan's contact information is made available.  
District 5, Councilor Cynthia Borrego, letter(s) will be sent to Councilor Cynthia Borrego: [cynthiaborrego@cabq.gov](mailto:cynthiaborrego@cabq.gov) and Policy Analyst Susan Vigil: [susanvigil@cabq.gov](mailto:susanvigil@cabq.gov)  
District 6, Councilor Pat Davis, letter(s) will be sent to Councilor Pat Davis: [patdavis@cabq.gov](mailto:patdavis@cabq.gov) and Policy Analyst Sean Foran: [seanforan@cabq.gov](mailto:seanforan@cabq.gov)  
District 7, Councilor Dianne Gibson, letter(s) will be sent to Councilor Diane Gibson: [dgibson@cabq.gov](mailto:dgibson@cabq.gov) and Policy Analyst Charlotte Chinana: [cchinana@cabq.gov](mailto:cchinana@cabq.gov)  
District 8, Councilor Trudy Jones, letter(s) will be sent to Councilor Trudy Jones: [trudyjones@cabq.gov](mailto:trudyjones@cabq.gov) and Policy Analyst Aziza Chavez: [azizachavez@cabq.gov](mailto:azizachavez@cabq.gov)  
District 9, Councilor Don Harris (Vice-President), letter(s) will be sent to Councilor Don Harris: [dharris@cabq.gov](mailto:dharris@cabq.gov) and Policy Analyst Bonnie Suter: [bsuter@cabq.gov](mailto:bsuter@cabq.gov)

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Joan

Morrison

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87048

[cara3cara05@gmail.com](mailto:cara3cara05@gmail.com)

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**Lehner, Catalina L.**

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**From:** Brito, Russell D.  
**Sent:** Friday, February 07, 2020 8:18 AM  
**To:** Lehner, Catalina L.  
**Cc:** Williams, Brennon  
**Subject:** FW: Public Comment from Jody Mostyn to OPPOSE PR-2018-001402/VA-2019-00103

**From:** form\_engine@fs6.formsite.com <form\_engine@fs6.formsite.com>  
**Sent:** Friday, February 7, 2020 7:36 AM  
**To:** Brito, Russell D. <RBrito@cabq.gov>  
**Subject:** Public Comment from Jody Mostyn to OPPOSE PR-2018-001402/VA-2019-00103

Dear Mr. Brito.

Please note my below message regarding PR-2018-001402/SI-2018-00171/VA-2019-00103.

This message is being cc'd to Sarita Nair ([snair@cabq.gov](mailto:snair@cabq.gov)), Janelle Johnson ([janellejohnson@cabq.gov](mailto:janellejohnson@cabq.gov)), James Aranda ([jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)), and Mayor Keller ([tkeller@cabq.gov](mailto:tkeller@cabq.gov)), as well as my City Councilor.

I OBJECT to the City Council's decision to limit the findings, which excluded issues previously raised by the public, all of which are pertinent to PR-2018-001402/SI-2018-00171/VA-2019-00103, including but not limited to:

1. sensitive lands; 5-2(C)(1) p198
2. major public open space
3. contiguous open space; 5-2(H)(2) p205-206
4. landscaping; Goal 10.3; CP10.3.4
5. adverse impacts to surrounding natural/cultural landscapes; 6-6(H)(3)(e) CP11.3.1/11.3.2/11.3.3

I RESTATE any and all previously submitted objections and oppositions.

---

I OPPOSE the updated site plan and object to the City Council's decision to limit the pertinent issues previously raised by the public and respectfully ask the EPC to deny approval(s) for project PR-2018-001402/SI-2018-00171/VA-2019-00103.

I understand that the issues relating to the remand findings include:

- (A) Applicable IDO Requirements;
- (B) Site Plan and Deficiencies;
- (C) EPC Remand Instructions; and
- (D) Other Matters.

I respectfully submit to the record this letter to state that:

(A) Applicable IDO Requirements

It is undisputed that the updated project site plan does not satisfy the text of the IDO definitions specific to this particular property (per IDO Section 4-3(B)(2)(d,e,f)). Definitions include:

---



(a) Cluster Development Design: A design technique that concentrates buildings in specific areas on a site to allow the remaining land to be used for recreation, open space, or preservation of sensitive lands. (p. 453)

(b) Cluster Development Dwelling: A development type that concentrates single-family or two-family dwellings on smaller lots than would otherwise be allowed in the zone district in return for the preservation of common open space within the same site, on a separate lot, or in an easement. (p. 458)

(c) Common Open Space: The area of undeveloped land within a cluster development that is set aside for the use and enjoyment by the owners and occupants of the dwellings in the development and includes agriculture, landscaping, on-site ponding, or outdoor recreation uses. The common open space is a separate lot or easement on the subdivision plat of the cluster development. (p. 479)

#### (B) Site Plan and Deficiencies

➤ It is undisputed that the updated project site plan is deficient as a “cluster development” and depicts a traditional, conventional subdivision layout in that it does not “concentrate buildings”, such as the exemplary cluster design of La Luz Subdivision, which is an 1/8 mile from this site;

➤ As stated by the Land Use Hearing Officer, “it is undisputed that there is no intent to phase the developments at the application site” [R.398];

➤ It is undisputed that the updated project site plan is deficient in that the total site area of 23.75 acres as one project cannot exceed 50 dwelling units;

➤ It is undisputed that the updated project site plan fails to satisfy requirements of the IDO for common open space because the project site uses existing preserved lands; there is no exchange “in return” for preservation; the updated site plan deceptively tries to cheat by covertly including existing common open space in its calculations;

➤ It is undisputed that the updated project site plan does not satisfy “dedication” (IDO text) or/nor “designation” (applicant text) of: 1) a sediment pond and 2) AMAFCA easement; neither qualify for common open;

➤ The record shows that the Open Space Superintendent and City Councilors “prefer development away from the eastern edge” which is the most sensitive boundary of the property, and the updated site plan dangerously develops the eastern edge, at the most sensitive portion, and creates devastating loss and damage to each type of qualifying sensitive lands on p198 [see D) below];

➤ It is undisputed that the updated project site plan is deficient when IDO Section 5-2(C)(4) implies that fewer lots should be considered for property adjacent to sensitive lands and that the proposed site design avoid sensitive flood ways and flood fringe areas.

➤ The updated project site plan clearly created higher density. It is undisputed that the updated project site plan fails to show how it avoids sensitive lands and/or minimizes problems arising from such density adjacent to and abutting sensitive lands, as noted at the August 5, 2019 City Council hearing by Councilor Borrego as a “huge issue to be resolved” by EPC.

#### (C) EPC Remand Instructions

It is clear the applicant is attempting to re-write the City Council’s findings for C(2) and C(3). The applicant must not be allowed to set the direction for EPC Remand instructions, which are solely and strictly the authority of the City Council, not the applicant. The EPC is expected by all parties, including the public, to follow the City

Council's instructions verbatim, legally and ethically. It is the EPC who is directed by City Council to solely, fully and wholly evaluate, explain and issue a decision for C(2) and C(3) as they are written by City Council. The City Council's instructions are binding, and not allowed to be arbitrarily and capriciously rewritten by the applicant for the benefit of the applicant. The applicant cannot act as consultant to the EPC.

This is particularly relevant to this case because this site includes sensitive lands, large strands of mature trees, US Waters, and adjacency to major public open space and protected lands such as the Rio Grande Valley State Park, Bosque, Rio Grande River, San Antonio Oxbow Wetland, San Antonio Oxbow Open Space, Montano Pueblo Open Space, and San Antonio Arroyo.

To date, this case has received hundreds of public submissions that oppose the project.

#### (D) Other Matters

##### ► Sensitive Lands

It is clear the updated project site plan does not explicate how the cluster development avoids sensitive lands. To date, the record lacks clear, reliable evidence showing how each of the criteria below has been fully analyzed and assessed, in spite of the staff planner's request to provide it and the Land Use Hearing Officer's confirmation of its importance to public safety. To date, those requirements are likely outstanding, deficient, omitted, or avoided:

- Steep slopes (5-2(C)(1)(b))
- Unstable soils (5-2(C)(1)(c))
- Wetlands (5-2(C)(1)(d))
- Arroyos (5-2(C)(1)(e))
- Irrigation facilities; acequias (5-2(C)(1)(f))
- Escarpments (5-2(C)(1)(g))
- Rock outcroppings (5-2(C)(1)(h))
- Large strands of mature trees (5-2(C)(1)(i))
- Archaeological sites (5-2(C)(1)(j))

In other words, the applicant must prove the above are not sensitive before granted approvals for the updated project site plan. The applicant must prove "structures will minimize problems arising from said development" (see p443, EPA Performance Controls for Sensitive Lands: A Practical Guide for Administrators)

##### ► No Negative Impact

It is the applicant, not appellants, who must provide and explicitly demonstrate that there will be no negative material or physical impact on the habitat values of the MPOS (per IDO Section 5-2(H)(2)(b)) and/or the sensitive lands above. No evidence has been provided to explicitly demonstrate material or physical impact on public safety, health, and welfare (e.g., fire safety). It is unclear from the updated project site plan that this cluster development mitigates adverse impacts on the following areas to the maximum extent possible (Per IDO Section 6-6(H)(3)(e) and the ABC Comprehensive Plan):

- public and private open space (Goal 10.3);
- bosque (Policy 10.3.4; 11.3.3);
- Rio Grande River (Policy 10.3.4);
- surrounding natural and cultural landscapes (Policy 11.3.1);
- arroyos (Policy 11.3.2);
- public park;
- wildlife habitat;
- recreational trails;
- watershed management; and
- drainage functions.



I OPPOSE the "updated site plan - EPC";

I respectfully ask the EPC to DENY approval(s) for project PR-2018-001402/SI-2018-00171/VA-2019-00103.

In Summary I OPPOSE the "updated site plan - EPC";

I OBJECT to the City Council's decision to limit the findings, which excluded issues previously raised by the public, including but not limited to, single project site, cluster development design, open space calculations, setbacks, sensitive lands, major public open space, contiguous open space, AMAFCA easement, landscaping, connectivity, hydrology concerns, and adverse impacts to surrounding natural/cultural landscapes, common open space and contiguous open space violations, all of which are pertinent to PR-2018-001402/SI-2018-00171/VA-2019-00103.

I RESTATE any and all previously submitted objections and oppositions.

I respectfully ask the EPC to DENY approval(s) for project PR-2018-001402/SI-2018-00171/VA-2019-00103.

**cc'd to:** District 1, Office of District 1 Councilor, letter(s) will be sent to the correct individual at the office of the honorable and former (deceased) Councilor Ken Sanchez: Policy Analyst Elaine Romero: [eromero@cabq.gov](mailto:eromero@cabq.gov)

Jody

Mostyn

4623 Almeria Dr. NW

Albuquerque

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87120

[bootskate35@msn.com](mailto:bootskate35@msn.com)

This email was sent to [RBrito@cabq.gov](mailto:RBrito@cabq.gov) as a result of a form being completed.  
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**Lehner, Catalina L.**

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**From:** Brito, Russell D.  
**Sent:** Monday, February 10, 2020 8:32 AM  
**To:** Lehner, Catalina L.  
**Cc:** Williams, Brennon  
**Subject:** FW: Public Comment from Julianne Parrish to OPPOSE  
PR-2018-001402/VA-2019-00103

**From:** [form\\_engine@fs6.formsite.com](mailto:form_engine@fs6.formsite.com) <[form\\_engine@fs6.formsite.com](mailto:form_engine@fs6.formsite.com)>  
**Sent:** Monday, February 10, 2020 7:23 AM  
**To:** Brito, Russell D. <[RBrito@cabq.gov](mailto:RBrito@cabq.gov)>  
**Subject:** Public Comment from Julianne Parrish to OPPOSE PR-2018-001402/VA-2019-00103

Dear Mr. Brito.

Please note my below message regarding PR-2018-001402/SI-2018-00171/VA-2019-00103.

This message is being cc'd to Sarita Nair ([snair@cabq.gov](mailto:snair@cabq.gov)), Janelle Johnson ([janellejohnson@cabq.gov](mailto:janellejohnson@cabq.gov)), James Aranda ([jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)), and Mayor Keller ([tkeller@cabq.gov](mailto:tkeller@cabq.gov)), as well as my City Councilor.

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Julianne

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Parrish

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6605 San Blas Pl. NW

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Albuquerque

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NM

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87120

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jpprolife@gmail.com

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**Lehner, Catalina L.**

---

**From:** Brito, Russell D.  
**Sent:** Sunday, February 09, 2020 4:37 PM  
**To:** Lehner, Catalina L.  
**Cc:** Williams, Brennon  
**Subject:** Fwd: Public Comment from **Daryl Smith** to OPPOSE PR-2018-001402/VA-2019-00103

Thank you,

**RUSSELL D BRITO**  
division manager  
urban design & development  
o 505.924.3337  
e rbrito@cabq.gov  
cabq.gov/planning

Begin forwarded message:

**From:** "optimisticgrouch at gmail.com" <form\_engine@fs6.formsite.com>  
**Date:** February 7, 2020 at 9:57:11 PM MST  
**To:** "Brito, Russell D." <RBrito@cabq.gov>  
**Subject:** Public Comment from Daryl Smith to OPPOSE PR-2018-001402/VA-2019-00103  
**Reply-To:** <optimisticgrouch@gmail.com>

Dear Mr. Brito.

Please note my below message regarding PR-2018-001402/SI-2018-00171/VA-2019-00103.

This message is being cc'd to Sarita Nair (snair@cabq.gov), Janelle Johnson (janellejohnson@cabq.gov), James Aranda (jmaranda@cabq.gov), and Mayor Keller (tkeller@cabq.gov), as well as my City Councilor.

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2. major public open space
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4. landscaping; Goal 10.3; CP10.3.4
5. adverse impacts to surrounding natural/cultural landscapes; 6-6(H)(3)(e) CP11.3.1/11.3.2/11.3.3

I RESTATE any and all previously submitted objections and oppositions.



I OPPOSE the updated site plan and object to the City Council's decision to limit the pertinent issues previously raised by the public and respectfully ask the EPC to deny approval(s) for project PR-2018 001402/SI-2018-00171/VA-2019-00103.

I understand that the issues relating to the remand findings include:

- (A) Applicable IDO Requirements;
- (B) Site Plan and Deficiencies;
- (C) EPC Remand Instructions; and
- (D) Other Matters.

I respectfully submit to the record this letter to state that:

(A) Applicable IDO Requirements

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(a) Cluster Development Design: A design technique that concentrates buildings in specific areas on site to allow the remaining land to be used for recreation, open space, or preservation of sensitive land (p. 453)

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➤ It is undisputed that the updated project site plan is deficient in that the total site area of 23.75 acres as one project cannot exceed 50 dwelling units;

➤ It is undisputed that the updated project site plan fails to satisfy requirements of the IDO for common open space because the project site uses existing preserved lands; there is no exchange "in return" for preservation; the updated site plan deceptively tries to cheat by covertly including existing common open space in its calculations;

➤ It is undisputed that the updated project site plan does not satisfy "dedication" (IDO text) or/nor "designation" (applicant text) of: 1) a sediment pond and 2) AMAFCA easement; neither qualify for common open;

➤ The record shows that the Open Space Superintendent and City Councilors “prefer development away from the eastern edge” which is the most sensitive boundary of the property, and the updated site plan dangerously develops the eastern edge, at the most sensitive portion, and creates devastating loss and damage to each type of qualifying sensitive lands on p198 [see D) below];

➤ It is undisputed that the updated project site plan is deficient when IDO Section 5-2(C)(4) implies that fewer lots should be considered for property adjacent to sensitive lands and that the proposed site design avoid sensitive flood ways and flood fringe areas.

➤ The updated project site plan clearly created higher density. It is undisputed that the updated project site plan fails to show how it avoids sensitive lands and/or minimizes problems arising from such density adjacent to and abutting sensitive lands, as noted at the August 5, 2019 City Council hearing Councilor Borrego as a “huge issue to be resolved” by EPC.

#### (C) EPC Remand Instructions

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To date, this case has received hundreds of public submissions that oppose the project.

#### (D) Other Matters

##### ➤ Sensitive Lands

It is clear the updated project site plan does not explicate how the cluster development avoids sensitive lands. To date, the record lacks clear, reliable evidence showing how each of the criteria below has been fully analyzed and assessed, in spite of the staff planner’s request to provide it and the Land Use Hearing Officer’s confirmation of its importance to public safety. To date, those requirements are likely outstanding, deficient, omitted, or avoided:

- Steep slopes (5-2(C)(1)(b))
- Unstable soils (5-2(C)(1)(c))
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- Archaeological sites (5-2(C)(1)(j))

In other words, the applicant must prove the above are not sensitive before granted approvals for the updated project site plan. The applicant must prove “structures will minimize problems arising from



said development” (see p443, EPA Performance Controls for Sensitive Lands: A Practical Guide for Administrators)

➤ No Negative Impact

It is the applicant, not appellants, who must provide and explicitly demonstrate that there will be no negative material or physical impact on the habitat values of the MPOS (per IDO Section 5-2(H)(2)(f) and/or the sensitive lands above. No evidence has been provided to explicitly demonstrate material or physical impact on public safety, health, and welfare (e.g., fire safety). It is unclear from the updated project site plan that this cluster development mitigates adverse impacts on the following areas to the maximum extent possible (Per IDO Section 6-6(H)(3)(e) and the ABC Comprehensive Plan):

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- wildlife habitat;
- recreational trails;
- watershed management; and
- drainage functions.

I OPPOSE the “updated site plan - EPC”;

I respectfully ask the EPC to DENY approval(s) for project PR-2018-001402/SI-2018-00171/VA-2000103.

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➤ Major Public Open Space (MPOS)

It is obvious that the updated site plan does not have contiguous open space with the adjacent MPOS per IDO Section 5-2(H)(2)(a), which in this case is the San Antonio Oxbow Wetland (designated protection status); San Antonio Oxbow Open Space, Montano Pueblo Open Space, Rio Grande, and Grande Bosque.

➤ It is clear that significant erosion is currently an issue along the bluff. It is unclear how:

- the problem will be mitigated by the updated site plan’s development flows; and
- the proposed buffer in the updated site plan does not mitigate conditions to the maximum extent possible.

➤ Adverse, Harmful Impacts to Natural/Cultural Landscapes

It is clear the updated site plan does not protect native species, nor describe how native and cultural features will be protected and/or monitored and/or explicitly disclose what non-native species will be prohibited in order to protect on-site botanical ecosystems inexorably linked to adjacent wetland, river, arroyo, and open space ecosystems and sensitive habitat.

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In Summary I OPPOSE the “updated site plan - EPC”;

I OBJECT to the City Council’s decision to limit the findings, which excluded issues previously raised by the public, including but not limited to, single project site, cluster development design, open space calculations, setbacks, sensitive lands, major public open space, contiguous open space, AMAFCA easement, landscaping, connectivity, hydrology concerns, and adverse impacts to surrounding natural/cultural landscapes, common open space and contiguous open space violations, all of which are

pertinent to PR-2018-001402/SI-2018-00171/VA-2019-00103.

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I respectfully ask the EPC to DENY approval(s) for project PR-2018-001402/SI-2018-00171/VA-2000103.

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**cc'd to:** District 1, Office of District 1 Councilor, letter(s) will be sent to the correct individual at the office of the honorable and former (deceased) Councilor Ken Sanchez: Policy Analyst Elaine Romero: [eromero@cabq.gov](mailto:eromero@cabq.gov)  
District 2, Councilor Isaac Benton, letter(s) will be sent to Councilor Isaac Benton: [ibenton@cabq.gov](mailto:ibenton@cabq.gov) and Policy Analyst Diane Dolan: [ddolan@cabq.gov](mailto:ddolan@cabq.gov)  
District 3, Councilor Klarissa Peña, letter(s) will be sent to Councilor Klarissa Peña: [kpena@cabq.gov](mailto:kpena@cabq.gov) and Policy Analyst Cherise Quezada: [cquezada@cabq.gov](mailto:cquezada@cabq.gov)  
District 5, Councilor Cynthia Borrego, letter(s) will be sent to Councilor Cynthia Borrego: [cynthiaborrego@cabq.gov](mailto:cynthiaborrego@cabq.gov) and Policy Analyst Susan Vigil: [susanvigil@cabq.gov](mailto:susanvigil@cabq.gov)

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Daryl

Smith

1359 San Lorenzo Ave., NW

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New Mexico

87107

[optimisticgrouch@gmail.com](mailto:optimisticgrouch@gmail.com)

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This message has been analyzed by Deep Discovery Email Inspector.



**Lehner, Catalina L.**

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**From:** Brito, Russell D.  
**Sent:** Friday, February 07, 2020 8:17 AM  
**To:** Lehner, Catalina L.  
**Cc:** Williams, Brennon  
**Subject:** FW: Public Comment from Barbara Tegtmeier to OPPOSE PR-2018-001402/VA-2019-00103

**From:** form\_engine@fs6.formsite.com <form\_engine@fs6.formsite.com>  
**Sent:** Friday, February 7, 2020 7:35 AM  
**To:** Brito, Russell D. <RBrito@cabq.gov>  
**Subject:** Public Comment from Barbara Tegtmeier to OPPOSE PR-2018-001402/VA-2019-00103

Dear Mr. Brito.

Please note my below message regarding PR-2018-001402/SI-2018-00171/VA-2019-00103.

This message is being cc'd to Sarita Nair ([snair@cabq.gov](mailto:snair@cabq.gov)), Janelle Johnson ([janellejohnson@cabq.gov](mailto:janellejohnson@cabq.gov)), James Aranda ([jmaranda@cabq.gov](mailto:jmaranda@cabq.gov)), and Mayor Keller ([tkeller@cabq.gov](mailto:tkeller@cabq.gov)), as well as my City Councilor.

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3. contiguous open space; 5-2(H)(2) p205-206
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- (B) Site Plan and Deficiencies;
- (C) EPC Remand Instructions; and
- (D) Other Matters.

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- (A) Applicable IDO Requirements

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particular property (per IDO Section 4-3(B)(2)(d,e,f)). Definitions include:

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► It is undisputed that the updated project site plan is deficient in that the total site area of 23.75 acres as one project cannot exceed 50 dwelling units;

► It is undisputed that the updated project site plan fails to satisfy requirements of the IDO for common open space because the project site uses existing preserved lands; there is no exchange “in return” for preservation; the updated site plan deceptively tries to cheat by covertly including existing common open space in its calculations;

► It is undisputed that the updated project site plan does not satisfy “dedication” (IDO text) or/nor “designation” (applicant text) of: 1) a sediment pond and 2) AMAFCA easement; neither qualify for common open;

► The record shows that the Open Space Superintendent and City Councilors “prefer development away from the eastern edge” which is the most sensitive boundary of the property, and the updated site plan dangerously develops the eastern edge, at the most sensitive portion, and creates devastating loss and damage to each type of qualifying sensitive lands on p198 [see D) below];

► It is undisputed that the updated project site plan is deficient when IDO Section 5-2(C)(4) implies that fewer lots should be considered for property adjacent to sensitive lands and that the proposed site design avoid sensitive flood ways and flood fringe areas.

► The updated project site plan clearly created higher density. It is undisputed that the updated project site plan fails to show how it avoids sensitive lands and/or minimizes problems arising from such density adjacent to and abutting sensitive lands, as noted at the August 5, 2019 City Council hearing by Councilor Borrego as a “huge issue to be resolved” by EPC.

#### (C) EPC Remand Instructions

It is clear the applicant is attempting to re-write the City Council’s findings for C(2) and C(3). The applicant must not be allowed to set the direction for EPC Remand instructions, which are solely and strictly the authority of the



City Council, not the applicant. The EPC is expected by all parties, including the public, to follow the City Council's instructions verbatim, legally and ethically. It is the EPC who is directed by City Council to solely, fully and wholly evaluate, explain and issue a decision for C(2) and C(3) as they are written by City Council. The City Council's instructions are binding, and not allowed to be arbitrarily and capriciously rewritten by the applicant for the benefit of the applicant. The applicant cannot act as consultant to the EPC.

This is particularly relevant to this case because this site includes sensitive lands, large strands of mature trees, US Waters, and adjacency to major public open space and protected lands such as the Rio Grande Valley State Park, Bosque, Rio Grande River, San Antonio Oxbow Wetland, San Antonio Oxbow Open Space, Montano Pueblo Open Space, and San Antonio Arroyo.

To date, this case has received hundreds of public submissions that oppose the project.

#### (D) Other Matters

##### ► Sensitive Lands

It is clear the updated project site plan does not explicate how the cluster development avoids sensitive lands. To date, the record lacks clear, reliable evidence showing how each of the criteria below has been fully analyzed and assessed, in spite of the staff planner's request to provide it and the Land Use Hearing Officer's confirmation of its importance to public safety. To date, those requirements are likely outstanding, deficient, omitted, or avoided:

- Steep slopes (5-2(C)(1)(b))
- Unstable soils (5-2(C)(1)(c))
- Wetlands (5-2(C)(1)(d))
- Arroyos (5-2(C)(1)(e))
- Irrigation facilities; acequias (5-2(C)(1)(f))
- Escarpments (5-2(C)(1)(g))
- Rock outcroppings (5-2(C)(1)(h))
- Large strands of mature trees (5-2(C)(1)(i))
- Archaeological sites (5-2(C)(1)(j))

In other words, the applicant must prove the above are not sensitive before granted approvals for the updated project site plan. The applicant must prove "structures will minimize problems arising from said development" (see p443, EPA Performance Controls for Sensitive Lands: A Practical Guide for Administrators)

##### ► No Negative Impact

It is the applicant, not appellants, who must provide and explicitly demonstrate that there will be no negative material or physical impact on the habitat values of the MPOS (per IDO Section 5-2(H)(2)(b)) and/or the sensitive lands above. No evidence has been provided to explicitly demonstrate material or physical impact on public safety, health, and welfare (e.g., fire safety). It is unclear from the updated project site plan that this cluster development mitigates adverse impacts on the following areas to the maximum extent possible (Per IDO Section 6-6(H)(3)(e) and the ABC Comprehensive Plan):

- public and private open space (Goal 10.3);
- bosque (Policy 10.3.4; 11.3.3);
- Rio Grande River (Policy 10.3.4);
- surrounding natural and cultural landscapes (Policy 11.3.1);
- arroyos (Policy 11.3.2);
- public park;
- wildlife habitat;
- recreational trails;
- watershed management; and
- drainage functions.

I OPPOSE the "updated site plan - EPC";

I respectfully ask the EPC to DENY approval(s) for project PR-2018-001402/SI-2018-00171/VA-2019-00103.

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In Summary I OPPOSE the "updated site plan - EPC";

I OBJECT to the City Council's decision to limit the findings, which excluded issues previously raised by the public, including but not limited to, single project site, cluster development design, open space calculations, setbacks, sensitive lands, major public open space, contiguous open space, AMAFCA easement, landscaping, connectivity, hydrology concerns, and adverse impacts to surrounding natural/cultural landscapes, common open space and contiguous open space violations, all of which are pertinent to PR-2018-001402/SI-2018-00171/VA-2019-00103.

I RESTATE any and all previously submitted objections and oppositions.

I respectfully ask the EPC to DENY approval(s) for project PR-2018-001402/SI-2018-00171/VA-2019-00103.

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**cc'd to:** District 1, Office of District 1 Councilor, letter(s) will be sent to the correct individual at the office of the honorable and former (deceased) Councilor Ken Sanchez: Policy Analyst Elaine Romero: [eromero@cabq.gov](mailto:eromero@cabq.gov)

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